

APPENDIX A

CORPORATE INTEGRITY AGREEMENT OMNICARE, INC.

This Corporate Integrity Agreement ("the Agreement") is entered into between Omnicare, Inc. ("Omnicare") and the Office of Inspector General of the United States Department of Health and Human Services ("HHS/OIG"). Pursuant to this Agreement, Omnicare agrees to undertake the compliance obligations outlined below.

I. Preamble

HHS/OIG acknowledges and commends Omnicare on the development and adoption of a comprehensive corporate compliance plan (the "Program") throughout the corporation. Omnicare agrees to continue to implement its company-wide corporate compliance program to prevent fraud, abuse, and false billing to the Medicare and Medicaid programs and all other state and federal health care programs by Omnicare, its subsidiaries, employees, independent contractors and third parties who are directly involved in or responsible for the dispensing, control and/or delivery of medications, pharmaceutical items or related services, and those who are involved in or responsible for the submission of claims for such items or services to the Medicare, Medicaid and other state and federal health care programs. The Program shall be maintained so as to ensure, to the extent reasonably possible, that Omnicare and each of its directors, officers, employees and contractors maintain the business integrity required of a participant in state or federal health care programs, and that Omnicare is in compliance with all statutes and regulations applicable to such programs and with the terms of the Agreement set forth below.

II. Terms and Conditions

The period of future compliance obligations assumed by Omnicare under this Agreement shall be four (4) years from the date of execution of this Agreement. The execution date shall be the date upon which the Agreement has been signed by each of the parties. The annual submissions required under the Agreement shall be submitted on the anniversary date of the execution of this Agreement. All reports and notifications required under this Agreement shall be sent to:

ATTN: Office of Counsel to the Inspector General
Civil Recoveries Branch -- Compliance Unit
U.S. Department of Health and Human Services
Cohen Building Room 5527
330 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 619-2078
(202) 205-0604 (fax)

Omnicare agrees to implement the following measures within ninety (90) days of the date of

APPENDIX A

execution of this Agreement, unless otherwise specified below:

A. Compliance Officer and Corporate Compliance Committee.

A corporate officer, appointed by the Board of Directors of Omnicare, shall be appointed as the Corporate Compliance Officer (referred to hereafter as the "Compliance Officer") and shall chair a compliance committee called the Compliance Review Committee that shall be responsible for Omnicare's Program. The members of the Compliance Review Committee shall include the Vice President with responsibility for compliance operations and reporting requirements, the Executive Vice President - Operations and the Vice President - Employee Benefits and Risk Management. The Compliance Officer shall submit annual reports (or more frequent, if circumstances require) to the Board of Directors of Omnicare and to the HHS/OIG Office of Counsel to the Inspector General (OCIG) as detailed in sections II.C and D of this Agreement. The Compliance Officer shall also be responsible for overseeing and monitoring the company's compliance activities. Further, the Compliance Officer shall be responsible for developing and distributing to appropriate individuals all written compliance policies and procedures. Any inquiries that HHS/OIG/OCIG may have concerning the company's compliance obligations pursuant to this Agreement shall be addressed to:

Corporate Compliance Officer
Omnicare, Inc.
2800 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202-4728
(513) 762-6878

B. Medication Billing and Crediting Procedures.

Omnicare shall either (1) contract with an independent professional organization, such as an accounting or law firm, or (2) use internal qualified personnel with adequate statistical and program expertise, to review, at a minimum, on an annual basis the billing policies and procedures of all of its Illinois pharmacies and/or pharmacy-related facilities, such as warehouses or distribution facilities, that are regulated pursuant to the Illinois Pharmacy Practice Act, the Illinois Controlled Substances Act, and related regulations. This annual review shall be aimed at ensuring that (1) the federal health care programs, including the Illinois Medical Assistance (Medicaid) program, are billed appropriately for medications or related services that are provided as claimed; (2) all of Omnicare's contracts with third parties involving Omnicare's dispensing, storage, delivery or returns of medications, or involving related services, comply with all applicable state and federal statutes and regulations; and (3) Omnicare complies with Illinois statutes and regulations regarding returned medications. Specifically, Omnicare agrees that as part of the latter review, it will review whether Omnicare has either (i) destroyed all unused medications paid for by the Illinois Medicaid

APPENDIX A

program that are subsequently returned from nursing homes, other health care facilities or individuals to Omnicare (hereafter "Medicaid Returns") or (ii) credited the Illinois Department of Public Aid (which administers Illinois' Medicaid Program) the appropriate amount if the returned medications are not destroyed but are instead returned to Omnicare's inventory.

C. Duty to Investigate, Report and Correct.

1. Investigating Identified Problems.

If, (1) in performing the compliance activities and audits described in paragraph II.B, above, or (2) Omnicare receives from any other source credible evidence of employee misconduct, Omnicare determines that there are reasonable grounds to suspect that a material violation of either (a) applicable state or federal statutes, (b) this Agreement, or (c) Omnicare's Program has occurred, Omnicare will immediately conduct an appropriate internal inquiry/investigation. The inquiry/investigation will be conducted to determine whether there are reasonable grounds to conclude that a material violation of the applicable state and federal statutes governing state and federally funded health care programs (Applicable Statutes) occurred. A material violation is one which has a significant, adverse impact on the Medicare program, the Illinois Medicaid and other state health care programs, and all other Federal health care programs, as defined in § 1128B(f) of the Social Security Act (42 U.S.C. § 1320a-7b(f) (as amended)).

2. Reporting and Corrective Actions.

(a) Omnicare shall report any known or suspected material violations of Applicable Statutes discovered during such review to HHS/OIG/OCIG in the following manner. If at the conclusion of the internal inquiry/investigation, which shall be no later than within sixty (60) days of the start of its inquiry/ investigation, Omnicare determines that there are reasonable grounds to conclude that a material violation of Applicable Statutes, this Agreement, or Omnicare's Program did occur, Omnicare shall immediately undertake appropriate corrective actions, including prompt restitution of any damages or overpayments to the extent that Omnicare is legally responsible for any such damages or overpayments. Omnicare also will report to OIG promptly, but no later than thirty (30) days from Omnicare's determination that there are reasonable grounds to believe that a material violation has occurred: (i) its findings concerning the material violation (if any), (ii) Omnicare's actions as of that date to correct such material violation (if any), (iii) the Medicare and/or Medicaid provider number(s) of the entity at issue, and (iv) any further steps Omnicare plans to take to address such material violation and prevent it from reoccurring in the future. Failure to submit a report notifying OIG of the material violation will be considered a material breach of

APPENDIX A

this Agreement.

(b) If, at the conclusion of an internal inquiry/investigation described in paragraph II.C(2) above, Omnicare identifies an overpayment amount owed to a state or federally funded health care program but determines that there was no material violation of Applicable Statutes, this Agreement, or Omnicare's Program, Omnicare agrees to undertake appropriate corrective actions to eliminate the cause of the overpayment(s) and shall make prompt restitution of the overpayment amount to the appropriate state or federally funded health care program. Omnicare also will report in its annual report as described below in paragraph II.D: (i) the cause of Omnicare's (and/or its successors' or assigns') overpayment, (ii) the calculation of the overpayment, (iii) Omnicare's actions to correct the cause of the overpayment, and (iv) any further steps Omnicare plans to take to address the cause of the overpayment and to prevent it from reoccurring in the future.

D. Periodic Reporting Requirements.

1. Waiver of Interim Report Requirement. In light of Omnicare's production to HHS/OIG/OCIG of its Compliance Program Policies for Management and Employees, and in light of the corrective actions taken by Omnicare in its Home Pharmacy Services location to date, Omnicare will not be required to submit an interim report 120 days following the execution date of this Agreement.

2. Annual Reports to HHS/OIG/OCIG.

(a) Omnicare will, at a minimum, annually provide HHS/OIG/OCIG with a written summary report of any compliance audits or independent reviews, including their findings, conducted pursuant to paragraph II.C of this Agreement. Omnicare will also annually provide HHS/OIG/OCIG with a written summary report of the corrective actions that Omnicare has undertaken as a result of any deficiencies that were discovered by either Omnicare or the independent review. This report on Omnicare's corrective actions will include a certification by Omnicare's Compliance Officer that all deficiencies found either pursuant to the independent review or through Omnicare's own internal procedures have been adequately addressed to ensure Omnicare's compliance with all the requirements of this paragraph and this Agreement. In the event HHS/OIG/OCIG requests from Omnicare's Corporate Compliance Officer additional information (such as copies of internal Omnicare reports), Omnicare agrees to furnish such information within thirty (30) days of such request. Omnicare also agrees to provide a copy of its Annual Report.

(b) In the event Omnicare believes that certain internal reports are not subject to disclosure under the Freedom of Information Act, Omnicare shall stamp each such

APPENDIX A

document as "Confidential" or "Proprietary." In the event HHS/OIG/OCIG receives a request for documents containing Omnicare's "Confidential" or "Proprietary" stamp, HHS/OIG/OCIG shall promptly notify Omnicare so that Omnicare may object to their release.

3. Quarterly Reports to IDPR. Omnicare will maintain and provide quarterly written reports to the Illinois Department of Professional Regulation (IDPR), which regulates licensed pharmacies in the state, regarding the number and source of Omnicare's Medicaid Returns and compliance with Omnicare's returned medication policy relating to the company's Illinois locations and operations. Omnicare shall certify in its annual report that it has furnished quarterly reports to IDPR consistent with this section.

4. Notification of Deficiencies. If, during the Term of this Agreement, Omnicare receives a final written report issued by an agency or organization charged with reviewing compliance with applicable licensure, accreditation, and/or certification requirements, which finds significant deficiencies relative to such requirements, Omnicare shall promptly take steps to correct such deficiencies, to the reasonable satisfaction of the agency or organization, and will provide OIG/OCIG with a copy of the final written report issued by the agency or organization and a description of any corrective steps taken with regard to significant deficiencies.

E. Corporate Integrity Policy.

HHS/OIG acknowledges that Omnicare has developed and adopted a Program regarding its commitment to insure compliance with all statutes and regulations related to the delivery of medications or related services in all of its business locations. Omnicare shall post in a prominent place accessible to each employee a notice detailing its commitment to comply with all applicable federal and state statutes and regulations in the conduct of its business. A copy of the Program and notice will be available to the HHS/OIG for review upon request. Further, Omnicare agrees to make material adherence to its Program a condition of continued employment with the company and to make all employees aware of this policy.

F. Information and Education.

As part of the Program adopted by Omnicare, Omnicare has instituted and agrees to maintain an information and education program designed to ensure that each of its officers, directors, and employees is aware of all applicable health care statutes, including Medicare and Medicaid statutes, regulations, and standards of business conduct that such individual is expected to follow and the consequences both to the individual and Omnicare that will ensue from any violation of such requirements. Each officer, director and employee shall receive at least one (1) hour of initial training regarding Omnicare's Program and its Corporate

APPENDIX A

Integrity Policy. Thereafter, Omnicare will require all Omnicare employees affiliated with its Illinois locations and operations who are involved in the preparation, provision or delivery of medications or related billing services to attend annual continuing education regarding Omnicare's Program. Omnicare agrees that during the Term of this Agreement, each such employee shall receive not less than one (1) hour of training regarding the Omnicare Corporate Compliance Program. As part of this training, employees will be instructed that compliance is a condition of their continued employment with Omnicare and that it is the personal obligation of each employee to ensure that all billings and submission of claims to federal health care programs are accurate. The legal sanctions for improper billings to the federal health care programs will also be described as part of the training. Omnicare agrees to provide OIG with a copy of the training schedule and training materials provided to the employees described above as part of the annual training with each annual report submitted pursuant to paragraph II.D of this Agreement.

Such training shall include training with regard to the proper billing requirements for state and federal health care programs. In addition, with regard to those Omnicare employees involved in the company's Illinois operations, the training shall include an overview of Omnicare's Returned Medication Policy and the applicable state law and regulations.

G. Confidential Disclosure Program.

As part of the Program adopted by Omnicare, Omnicare has established and agrees to maintain for the term of this Agreement a confidential disclosure program, such as the Omnicare Compliance Hotline, enabling employees to disclose any practices or billing procedures deemed by the employee to be inappropriate to an identified individual not in that employee's direct chain of command. Omnicare shall, as part of the program, require the internal review of any such disclosure and ensure that proper follow-up is conducted. Omnicare shall include in its annual report to HHS/OIG/OCIG a summary of communications concerning inappropriate billings or any other inappropriate conduct under the confidential disclosure program that may constitute a violation of Applicable Statutes, and the results of any internal review and follow-up of such disclosures.

H. Dealing with Excluded or Convicted Persons or Entities.

Omnicare, as part of its Program, shall implement a written internal operating policy that Omnicare shall not knowingly employ or contract with, with or without compensation, an individual or entity who is listed by a federal agency as currently debarred, suspended or otherwise ineligible to participate in federal programs. In order to carry out the policy, Omnicare shall make reasonable inquiry into the status of any current or potential employee, consultant, or contractor. Such reasonable inquiry shall include, at a minimum, review of the HHS/OIG Cumulative Sanctions Report found on the Internet currently at <http://www.dhhs.gov/progorg/oig> and the General Services Administration (GSA) List of

APPENDIX A

Parties Excluded from Federal Procurement and Non-Procurement Programs (found on the Internet currently at <http://www.arnet.gov/eplis>).

Omnicare's policy may not require Omnicare to terminate the employment of individuals who become suspended or are proposed for debarment during their employment with Omnicare. Omnicare, however, will remove such employees from responsibility for, or involvement with, Omnicare's Medicare or Medicaid business operations until the resolution of such suspension or proposed debarment. In addition, if any employee of Omnicare is charged with a criminal offense relating to its Medicare or Medicaid business, Omnicare will remove that employee immediately from responsibility for or involvement with Omnicare's Medicare or Medicaid business affairs. If the employee is convicted or debarred on account of a health care related offense, Omnicare's policy requires that the employee will be terminated from employment with Omnicare. Omnicare shall notify HHS/OIG/OCIG of each such personnel action taken and the reasons therefore, within fifteen (15) days of the action.

Omnicare shall not allow, or cause to be allowed, any person convicted in any local, state or federal court of any felony involving health care matters to hold the position of officer or director of Omnicare, or any of its subsidiaries.

I. Annual Certification.

Omnicare currently requires annual certification by employees in management that they have read and understand Omnicare's Corporate Integrity Policy and are familiar with the procedures of the company's Program. Omnicare agrees to begin requiring annual certification by all employees affiliated with its Illinois operations and locations who are involved with the provision of pharmaceutical or billing services, who will certify: (a) that they have received and reviewed Omnicare's Corporate Integrity Policy, (b) that they understand that compliance with the Corporate Integrity Policy is a condition of their continued employment by Omnicare, and (c) that they are aware that Omnicare will take disciplinary action, up to and including termination, for violation of the principles and practices set forth in the company's Corporate Integrity Policy and applicable statutes. The annual certification may be performed during the annual training and education session required in paragraph II.F. Omnicare agrees to make all annual certifications available to OIG upon request. Omnicare agrees to include in the Annual Report submitted pursuant to paragraph II.D of this Agreement verification that all relevant employees, as described above in this paragraph, have signed the certification statement required herein.

APPENDIX A

III. OIG and IDPR Inspection, Audit and Review Rights

A. OIG Inspection, Audit and Review Rights.

In addition to any other right that HHS/OIG may have by statute, regulation, contract or pursuant to this Agreement, HHS or its duly authorized representative(s) may examine Omnicare's books, records, and other company documents and supporting materials for the purpose of verifying and evaluating: (1) Omnicare's compliance with the terms of this Agreement; (2) Omnicare's business conduct in its dealing with the United States Government, or any agencies or agents thereof; and (3) Omnicare's compliance with the requirements of the Medicare and Medicaid programs and other state and federal health care programs. The documentation described above shall be made available by Omnicare at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, HHS or its authorized representative(s) may interview any Omnicare employee who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and HHS. Employees may elect to be interviewed with or without a representative of Omnicare present.

B. IDPR Inspection, Audit and Review Rights.

In addition to any other right that the IDPR may have by statute, regulation, contract or pursuant to this Agreement, IDPR or its duly authorized representative(s) may examine the books, records, and other company documents and supporting materials related to Omnicare's Illinois operations at any time of its choosing during regular business hours. In the event IDPR executes an unscheduled inspection of Omnicare's Illinois' pharmacy operations, IDPR personnel will make known their identity and the purpose of their inspection or visit. Further, by this Agreement, Omnicare consents to such unannounced inspections without prior notice.

IV. Document and Record Retention

Omnicare shall maintain for inspection documents and records relating to Medicare and Medicaid reimbursement for a period of five (5) years following the execution of this Agreement.

V. Due Diligence Requirements

Omnicare agrees that for the term of this Agreement, as part of any due diligence attendant with its acquisitions (e.g., asset or stock purchase) of additional pharmacy operations or related businesses, it will reasonably inquire with the pertinent state regulatory agencies about any relevant Medicaid or Public Aid audits or reports specific to the entity that is or may be purchased.

APPENDIX A

VI. Breach and Default Provisions

Omnicare's compliance with the terms and conditions of this Agreement shall constitute an element of Omnicare's present responsibility with regard to participation in state and federal health care programs. Omnicare's failure to meet any of its material obligations pursuant to the terms and conditions of this Agreement constitutes a separate cause for exclusion.

In the event that HHS/OIG believes Omnicare has breached one or more of its obligations under the Agreement, HHS/OIG shall notify Omnicare of the alleged breach by certified mail, specifying the nature and extent of the alleged breach. Omnicare will have thirty (30) days from receipt of the notice: (a) to cure said breach; or (b) otherwise satisfy the government that (1) it is in full compliance with this Agreement or (2) the breach cannot be reasonably cured within thirty (30) days, but that Omnicare has taken action to cure the breach and is pursuing such action with diligence.

If, at the end of the thirty day period described above, HHS/OIG determines that Omnicare continues to be in material breach of one or more of its obligations under this Agreement, HHS/OIG may, in writing and by certified mail, declare Omnicare to be in default and initiate proceedings to suspend or exclude Omnicare from participation in the Title XVIII (Medicare) program, the Title XIX (Medicaid) program and other federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (as amended) until such time as the breach is cured. The document by which HHS/OIG may declare Omnicare to be in default and notify Omnicare of HHS/OIG's intention to exclude shall be hereafter referred to as the "Notice of Intention to Exclude Letter." In the event Omnicare fully cures the material breach or otherwise satisfies HHS/OIG, it will be promptly reinstated, retroactive to the date of cure.

If HHS/OIG/OCIG determines that it is necessary to conduct an independent audit or review to determine whether or to the extent to which Omnicare is complying with its obligation under this Agreement (*i.e.*, whether Omnicare is in material breach), Omnicare agrees to pay for the reasonable cost of any such audit or review should it be found to have been in material breach.

Upon receipt by Omnicare of HHS/OIG's Notice of Intention to Exclude Letter, Omnicare shall be entitled to the due process afforded a provider under 42 U.S.C. § 1320a-7(f). Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a breach of this Agreement shall be: (1) whether Omnicare was in material breach of one or more of its obligations under this Agreement, as specified in the Notice of Intention to Exclude Letter; (2) whether such breach was continuing on the date on which HHS/OIG notified Omnicare of its proposal to exclude; and (3) whether Omnicare failed to cure the material breach or otherwise satisfy HHS/OIG within thirty (30) days after receiving notice thereof from HHS/OIG.

APPENDIX A

VII. Costs Related to Compliance Plans

Omnicare also agrees that all costs, as defined in FAR 31.205-47, incurred on behalf of Omnicare current or former officers or directors arising from, related to, or in connection with the Government's civil and criminal investigations, Omnicare's defense and settlement thereof, the Civil Settlement Agreement entered into by Omnicare and the United States, or the performance or administration of this Agreement as it relates to Omnicare's Home Pharmacy Services operations, shall be unallowable for Medicare, Medicaid, or other Government contract accounting purposes. Omnicare agrees to account separately for such costs. Omnicare shall treat these costs as unallowable costs for Government contract accounting purposes and shall account separately for such costs. Included in these unallowable costs are any legal or related costs expended on behalf of any convicted Omnicare employee. Omnicare also agrees to treat as unallowable the full salary and benefits costs of any officer, employee, or consultant removed from government contracting in accordance with the Omnicare policy regarding employees who are indicted, debarred, suspended, or proposed for debarment, and the cost of any severance payments or early retirement incentive payments paid to employees released from the company as a result of the wrongdoing at issue here.

VIII. Modification

Omnicare and HHS/OIG agree that any modification to this Agreement must be made by written consent of the parties. The authorized representative within the HHS/OIG shall be a member of its OCIG.

IX. Integration Clause

This Agreement and the Settlement Agreement entered into by HHS/OIG and Omnicare ("the parties") embody the entire agreement and understanding of the parties with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Agreement and the Settlement Agreement. This Agreement, together with the Settlement Agreement, supersedes any and all prior agreements and understandings between the parties with respect to such subject matter.


APPENDIX A

IN WITNESS WHEREOF, the parties hereto affix their signatures

FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Date

7-10-93


Lewis Morris
Assistant Inspector General for
Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
Department of Health and Human Services
330 Independence Avenue, S.W.
Washington, D.C. 20201

FOR OMNICARE, INC.

Date

Janice M. Rice
Vice President - Employee Benefits and Risk Management
Omnicare, Inc.
2800 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202-4728

Date

Sanford V. Teplitzky, Esquire
Martha P. Rogers, Esquire
Ober, Kaler, Grimes & Shriver, P.C.
120 East Baltimore Street
Baltimore, MD 21202-1643

APPENDIX A

IN WITNESS WHEREOF, the parties hereto affix their signatures

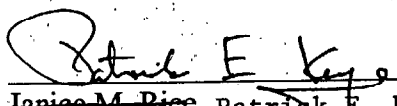
FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Date


Lewis Morris
Assistant Inspector General for
Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
Department of Health and Human Services
330 Independence Avenue, S.W.
Washington, D.C. 20201

FOR OMNICARE, INC.

4/16/98
Date


~~Janice M. Rice~~ Patrick E. Keefe, Executive Vice President-Operative
~~Vice President - Employee Benefits and Risk Management~~
Omnicare, Inc.
2800 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202-4728

April 9, 1998
Date


Sanford V. Teplitzky, Esquire
Martha P. Rogers, Esquire
Ober, Kaler, Grimes & Shriver, P.C.
120 East Baltimore Street
Baltimore, MD 21202-1643